

Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044

Members present: Co-chairman Jack Baker, Doug Andrew, Brett Hunter, and Secretary Meredith Bolduc. Chairman Rick Butler joined the meeting at 8:35 pm.

Mr. Butler called the meeting to order at 7:30 p.m. then called the roll.

Mr. Hunter made the motion to allow Mr. Boisvert to vote on any issue to come before the Board at tonight's meeting.

Motion seconded by Mr. Andrew with unanimous favorable vote.

It was agreed to go directly to the scheduled Public Hearing and take care of any Board business when the Hearing was finished.

Case # 05-006
Walter and Sandra Sadlier
MAP 2 LOT 156-1.11

Present: Abutter Brande McLean

Mr. Baker opened this Public Hearing at 7:35 pm and stated that this is a continuation of the July 19, 2005 portion of this Public Hearing.

Mr. Baker stated that the Board has received an August 24, 2005 handwritten withdrawal of the application for their request for a Zoning Variance from Walter and Sandra Sadlier. The Variance request was for relief from Article IV Section 3 of the Fremont Zoning Ordinance to allow for an addition to their residence to include an attached garage and second level in-law dwelling unit without proper acreage. The Board also received a copy of the minutes of the August 24, 2005 Planning Board Public Hearing during which Mr. Sadlier stated that he no longer wishes to seek a Variance and Mrs. Sadlier issued the withdrawal.

Mr. Hunter made the motion to accept the application withdrawal as issued by the applicants. Motion seconded by Mr. Andrew with unanimous favorable vote.

Mr. Baker stated, and the Board Members agreed, that there would be no Board action as the applicants have withdrawn their application.

Mr. Hunter made the motion to close this Public Hearing at 7:40 pm.
Motion seconded by Mr. Andrew with unanimous favorable vote.

Case # 05-009
Gary Babineau
Map 6 Lot 038
EQUITABLE WAIVER

Present: Owners Gary and Jackie Babineau, Tom Waters

Mr. Baker opened this Public Hearing at 8 pm.

Mr. Baker explained the purpose of the Board and the procedure for an Equitable Waiver of Dimensional Requirements and read the Public Notice of the Hearing which read as follows:

In accordance with NH RSA 675: 7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 8 pm on Tuesday August 30, 2005 at the Fremont Town Hall for Gary Babineau for 278 North Road, Map 6 Lot 038, Fremont NH.

The applicant is seeking an Equitable Waiver of Dimensional Requirements from the terms of Article IV Section 1 as set forth in the Town of Fremont Zoning Ordinances to allow an existing garage to continue to be located in current location, closer than thirty (30) feet from street property line.

It was noted that this hearing was noticed on August 12, 2005 at the Fremont Post Office and Fremont Town Hall and in the August 12, 2005 edition of the Rockingham News. The applicant and all abutters were notified via certified mail on August 12, 2005 and all returns have been received. The application package included: 6 copies of the drawn plan, proper check amount and a current list of abutters. The application also included a August 8, 2005 letter from the Building Inspector Thom Roy reflecting that "the garage appears to be positioned within the setback requirements of Article IV Section 1 and as further provided for in Article IV Section 9. The street property line setback for the lot of record date of this lot would be 30 feet."

Mr. Baker related that there is not a full Board present and gave the applicant the option of waiting for a full Board for a decision. The applicant opted to move forward with the members present.

Mr. Baker read the four points of criteria that must be met for an Equitable Waiver to be approved as well as Article IV Section 1 of the Fremont Zoning Ordinance.

Comment sheets were received from the following:

1. Fire Chief: "have no objection or comment"
2. Conservation Commission: "no comment".
3. Road Agent: "the driveway and garage have been there a long time. Although I would like to see driveway safer and meet today's standards like turn-around, etc.,

it has been there way before new regulations.”

Mr. Babineau stated that in 2001 the town issued him a building permit and he constructed the new garage in the same spot that the original garage was located for approximately 25 years. The measurements were from the edge of pavement and he did not know that he was in violation of the setbacks until the bank recently found the error.

Mr. Babineau addressed the four elements of an Equitable Waiver of Dimensional Requirements (in italics) and the Board voted as follows:

- (a) That the violation was not noticed or discovered by any owner, former owner, owner’s agent or representative, or municipal official, until after a structure in violation had been substantially completed or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value; *Mr. Babineau explained that his bank recently found that the garage is 22’ to the street lot line and not 30’ and that it is in that location because he constructed the new garage in the same place that the old one.*

Board’s vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Hunter	Yes
Mr. Boisvert	Yes

- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner’s agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner, owner’s agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority; *The measurement was mistakenly taken from the edge of the pavement.*

Board’s vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Hunter	Yes
Mr. Boisvert	Yes

- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; *This garage is in the same spot as the old one.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Hunter	Yes
Mr. Boisvert	Yes

- (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. *It would cost too much to take the garage down and move it because it is fully constructed and no public benefit would be gained.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Hunter	Yes
Mr. Boisvert	Yes

Mr. Hunter made the motion, based on the information presented and the results of the Boards vote on the four points of criteria that must be met for approval of an Equitable Waiver, that the Fremont Board of Adjustment approve the request of Gary Babineau for an Equitable Waiver of Dimensional Requirements from Article IV Section 1 of the Fremont Zoning Ordinance, to allow the applicant to maintain the location of an existing garage at Map 6 Lot 038, 278 North Road, closer than thirty (30) feet, and as close as, but no closer than, twenty two (22) feet from street property line.

Motion seconded by Mr. Andrew with unanimous favorable vote.

Mr. Hunter made the motion to close this Public Hearing at 8:15 pm.
Motion seconded by Mr. Andrew with unanimous favorable vote.

The applicant was reminded that anyone party to the action has 30 days to appeal this decision.

REGULATIONS

There was a general discussion relative to zoning regulations.

POINT OR ORDER: Chairman Rick Butler joined the meeting at 8:35 pm.

Case # 05-008
Tom Waters
MAP 7 LOT 117

Present: Owner Tom Waters, Conservation Commission member Bill Knee

Mr. Butler opened this Public Hearing at 7:40 p.m.

Mr. Hunter reported that on August 29, 2005 he and Mr. Baker met with Mr. Waters and Conservation Commission members Bill Knee, Jack Karcz and Janice O'Brien at the site. His comments were that Mr. Waters identified the proposed location of house lots and locations of known wetland areas. It was Mr. Hunter's opinion that the proposed buildings would not affect known wetland areas, but would affect the Aquifer Protection District. (see comment sheet in file)

Mr. Knee stated that a quorum of the Conservation Commission was present at the site visit and it was the opinion of that quorum that they stand by their previous recommendation for denial of the requested variance for less than 3 acre lots over the Aquifer. Mr. Knee added that there are two lots proposed to be created, both of which do not meet the zoning requirements and the Conservation Commission's feeling is that two separate lots would impact as much, if not more than a multi-family unit. He added that granting the Variance would be, in the Conservation Commission's opinion, entering into a slippery slope that they would not like to see the town enter into and recommend that the ZBA uphold the ordinance both now and in the future. Mr. Knee stated that if he has done his math correctly there could only be four units with three bedrooms and not five units as Mr. Waters has stated. Two single family homes could have eight bedrooms. The soils look to be well drained. He reiterated that the Conservation Commission would rather see multi family on the existing lot than approval of a two lot subdivision with less than three acres each.

Mr. Butler re-read the Conservation Commission's comment sheet that was reviewed at the August 23, 2005 portion of this Public Hearing.

Mr. Waters stated that he has been a NH State certified water systems manager and health officer for the town of Danville and it is his opinion that there is no polluted water in that area. He added that there is thirty five feet of sand before you get to water and the biggest water pollutants that he has seen is MTB and dead animals. Mr. Waters stated that two homes would better serve the town than even four units with three bedrooms each. There was a conversation relative to water testing.

After some discussion Mr. Waters addressed the five conditions of a Variance as submitted with his application (in italics) and the Board voted on them as follows.

1. The Proposed use would not diminish surrounding property values because:
the 2 lot subdivision would be more in line with the surrounding neighborhood.

Board vote:

Mr. Butler	Yes
Mr. Hunter	Yes
Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes

2. Granting the Variance would be of benefit to the public interest because:
"Granting a Variance" I would deed to the Town, Parcel #B, a section of road requested by Guerwood Holmes, Road Agent.

Board vote:

Mr. Butler	Yes
Mr. Hunter	Yes
Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes

3. Denial of the Variance would result in unnecessary hardship to the owner because of the following special circumstances of the property that distinguish it from to other properties similarly zoned because: *the majority of the lots in the area are under 1 acre with 100' frontage. The land was in the process of subdivision prior to zoning change from 2 acre to 3 acre".*

Board vote:

Mr. Butler	No
Mr. Hunter	No
Mr. Baker	No
Mr. Andrew	No
Mr. Boisvert	No

- a. Interferes with the applicant's reasonable use of the property considering its unique setting because; *The lot has excessive frontage causing a tax burden on a single family home. The only alternative would be a 5 unit condo distributing the frontage tax. He elaborated that the condo would distribute the frontage.*

Board vote:

Mr. Butler	No
------------	----

Mr. Hunter	No
Mr. Baker	No
Mr. Andrew	No
Mr. Boisvert	No

b. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restrictions of the property because: *The Aquifer Protection Article IX Section E, Use Regulation would be better served with a 2 lot subdivision than with a 5 unit condominium.*

There was a conversation relative to the meaning of substantial relationship and the general purpose of the Ordinance.

Board vote:

Mr. Butler	No
Mr. Hunter	No
Mr. Baker	No
Mr. Andrew	No
Mr. Boisvert	No

c. The Variance would not injure the public or private rights of others because: *The subdivision would be more in line with the surrounding lots.*

Board vote:

Mr. Butler	Yes
Mr. Hunter	Yes
Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes

4. Granting the Variance would do substantial justice because: *Two single family homes would better serve the surrounding community than a 5 unit condominium meaning fewer cars coming and going, fewer people. Mr. Waters stated that all abutters he spoke with are for the variance.*

Board vote:

Mr. Butler	No
Mr. Hunter	No
Mr. Baker	Yes
Mr. Andrew	No
Mr. Boisvert	No

5. The use is not contrary to the spirit of the ordinance because: *There will be less possibility of Aquifer contamination with 2 families and related vehicles than with 5 families; 1. less septic area; 2. less water use; 3; less*

building footprint; 4; fewer vehicles which means less possibility of gas, MTB, oil, or anti-freeze contamination.

Board vote:

Mr. Butler	No
Mr. Hunter	No
Mr. Baker	No
Mr. Andrew	No
Mr. Boisvert	No

Mr. Hunter made the motion that, based on the information and plan presented and as the result of the Boards vote on the five conditions of a Variance, the Fremont Zoning Board of Adjustment deny the Variance, as requested by Tom Waters for property located at Bean Road and Bruce Avenue, Map 7 Lot 117, to the terms of Article XI Section E-1 to allow a two (2) lot subdivision within the Aquifer Protection District without minimum lot size requirement.

Motion seconded by Mr. Baker with unanimous favorable vote.

Mr. Andrew made the motion to close this Public Hearing at 9:10 p.m.

Motion seconded by Mr. Baker with unanimous favorable vote.

MINUTES

Mr. Hunter made the motion to accept the August 23, 2005 meeting minutes as written.

Motion seconded by Mr. Andrew with unanimous favorable vote.

Mr. Hunter made the motion to adjourn at 9:40 p.m.

Motion seconded by Mr. Baker with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, Clerk

cc: SO, TC, PB, CC, RA, BI, HO, PD, FD
ZBA files